

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LOWEST PRICE GAS STATION and
KOO YUEN
Respondents

Case Nos.: I-00-11052
I-00-11156

FINAL ORDER

I. Introduction

This cases arises under the Civil Infractions Act of 1985 (D.C. Code §§ 6-2701 *et seq.*) and Title 21, Chapter 5 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction 00-11052 served on February 1, 2001, the Government charged Respondents Lowest Price Gas Station and Koo Yuen with a violation of 21 DCMR 502.1 for allegedly failing to secure a building permit before engaging in land disturbing activities.¹ The Notice of Infraction alleged that the violation occurred at 5001 Georgia Avenue, N.W. on January 26, 2001, and sought a fine of \$500.00.

¹ 21 DCMR 502.1 provides: “No person may engage in any land disturbing activity on any property within the District until that person has secured a building permit from the District. Approval of a building permit shall be conditioned upon submission by the permit applicant of an erosion and sedimentation plan which has been reviewed and approved by the Department.”

Respondents failed to answer the first Notice of Infraction within the allotted time period (fifteen days plus five additional days for service by mail pursuant to D.C. Code §§ 6-2712(e), 6-2715). On March 8, 2001, this administrative court issued an order finding Respondents in default, assessing a statutory penalty of \$500.00 as authorized by D.C. Code § 6-2704(a)(2)(A), and requiring the Government to serve a second Notice of Infraction. The Government served the second Notice of Infraction 00-11156 on March 15, 2001.

On March 23, 2001, Respondents filed their plea of Admit along with a \$500.00 check (#000263) and a request for a suspension or reduction of the assessed penalty. As part of their request, Respondents assert that they had forwarded their plea and payment by mail to this administrative court on February 15, 2001. Respondents assert that they later discovered that they had mistakenly mailed their submission to 525 North Capitol Street, N.E., as opposed to the correct address of 825 North Capitol Street, N.E. as set forth in the Notice of Infraction. Respondents further represented that they had “promptly and faithfully” paid a \$10,000.00 fine “last time go around.”

On March 29, 2001, this administrative court issued an order permitting the Government to reply to Respondents’ submissions within ten days of the service date of the order. Because no response from the Government has been received, this matter is now ripe for adjudication.

II. Findings of Fact

1. By their plea of Admit, Respondents have admitted violating 21 DCMR 502.1 on January 26, 2001 at 5001 Georgia Avenue, N.W.
2. On January 26, 2001, Respondents failed to obtain a building permit prior to engaging in land disturbing activity at 5001 Georgia Avenue, N.W.
3. On February 15, 2001, Respondents mailed their plea of Admit to the charge set forth in Notice of Infraction 00-11052 along with a \$500.00 check to this administrative court using a mailing address of 525 North Capitol Street, N.E., rather than the correct mailing address of 825 North Capitol Street, N.W., as set forth in the Notice of Infraction. This administrative court did not receive Respondents' February 15, 2001 submission.
4. On March 21, 2001 the Department of Health, Environmental Health Administration ("EHA"), received a letter from Respondents dated March 9, 2001 indicating a plea of Admit, along with a check (#000263) in the amount of \$500.00. EHA subsequently forwarded Respondents' untimely submission to this administrative court on March 23, 2001.
5. As referenced in their request for a reduction or suspension of the statutory penalty, Respondents had previously been issued six (6) separate Notices of Infraction. Respondents paid a total of \$10,000.00 in fines in six (6) monthly installments of \$1,666.67 as part of a consent order disposing of the cases. *See DOH v. Lowest Price Gas Station*, Nos. OAH C-00-80012, I-00-10090, I-00-10279, I-00-10280, I-00-10282, I-00-20046 (Consent Order, August 4, 2000).

III. Conclusions of Law

1. On January 26, 2001, Respondents violated 21 DCMR 502.1 at 5001 Georgia Avenue, N.E. A fine of \$500.00 is authorized for that violation, and Respondents have already paid that fine in full. *See* 16 DCMR 3234.1.
2. Respondents have requested a suspension or reduction of the statutory penalty. Pursuant to D.C. Code § 6-2712, if a respondent has been duly served a Notice of Infraction and fails, without good cause, to answer that Notice of Infraction within the established time limits, the respondent is liable for a statutory penalty equal to the applicable fine. D.C. Code § 6-2704(a)(2)(A).
3. Based on this record, Respondents have not established good cause for failing to timely respond to the Notice of Infraction. Respondents' uncontroverted explanation that they mailed their original submission to this administrative court using a "525" North Capitol Street address as opposed to the correct "825" North Capitol Street is unreasonable given the clear instructions on the Notice of Infraction as well as Respondents' recent and extensive prior dealings with this administrative court. *See DOH v. Lowest Price Gas Station*, OAH Nos. C-00-80012, I-00-10090, I-00-10279, I-00-10280, I-00-10282, I-00-20046 (Consent Order, August 4, 2000) (outlining payment of \$10,000.00 fine in six (6) installments over as many months). Accordingly, the assessed penalty of \$500.00 shall not be suspended or reduced.

IV. Order

Based upon the above findings of fact and conclusions of law, it is, this _____ day of _____, 2001:

ORDERED, that Notice of Infraction 00-11156 is hereby **DISMISSED AS MOOT**; and it is further,

ORDERED, that Respondents shall pay a total of **FIVE HUNDRED DOLLARS (\$500.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order. D.C. Code § 6-2713(i)(1), as amended by the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, D.C. Law 13-281, effective April 27, 2001; and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including

the suspension of Respondents' licenses or permits pursuant to D.C. Code § 6-2713(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Code § 6-2713(i), and the sealing of Respondents' business premises or work sites pursuant to D.C. Code § 6-2703(b)(6).

/s/ 9/4/01

Mark D. Poindexter
Administrative Judge